S.B. CIVIL WRIT PETITION NO.965/2005

Jagdish Prasad vs. State of Rajasthan and others.

Date : 17.2.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Kailash Khatri, for the petitioner.

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Heard learned counsel for the petitioner.

Admittedly, the petitioner has no right or title in the property in dispute. The petitioner is claiming old possession and on the basis of said old possession, the petitioner is seeking that he may not be evicted from the land in dispute.

Learned counsel for the petitioner relied upon the judgment of this Court delivered in the case of Chena Ram vs. Municipal Board, Sanchore and others (S.B. Civil Writ Petition No.3680/1989) decided on 6.7.1999 and the judgment of the Hon'ble Supreme court delivered in the case of Government of Andhra Pradesh Ltd. vs. Thummala Krishna Rao and another reported in (1982) 2 S.C.C. 134.

It is clear from the judgment relied upon by the petitioner in the case of Thumala Krishna Rao (supra) wherein the Hon'ble Supreme Court itself held that the summary proceedings can be initiated only where unauthorised occupation of the Government property is not disputed and further held that when a title of the

land is disputed bonafidely, then such dispute must not be adjudicated by summary proceedings but by civil suit.

Here in this case, admittedly, neither the petitioner has any title nor he has any claim of title, therefore, the aforesaid judgment of Hon'ble Supreme Court in place of supporting the petitioner, goes against him and in view of the said judgment, summary proceedings can be initiated.

In the peculiar facts of the case, this Court in the case of Chena Ram (supra) directed Municipal Board to find out suitable premises and the same may be offered to the petitioner and thereafter evict him from the property in question.

Since the facts of the case are entirely different and the authorities want to evict the petitioner by following the process of law, their appears to be no merit in this petition.

However, in case, the petitioner can get any relief under any of the scheme framed under law, he should have approached the concerned authorities. In case, the petitioner has submitted any representation for regularisation of his land or for alternate accommodation and which can be granted, then the authorities may consider the representation of the petitioner and if the petitioner has not submit, he may submit his representation before the concerned

authority who may decide the same strictly in accordance with law and not by treating this order as favour to the petitioner.

With these observations, this writ petition is disposed of.

(PRAKASH TATIA), J.

S.Phophaliya